Executive Floor Covering, Inc. *and* Washington Area Carpet and Industrial Insurance Fund. Case 5–CA–23615

August 22, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon a charge filed by the Charging Party, Washington Area Carpet and Industrial Insurance Fund (the Fund) on June 11, 1993, the General Counsel of the National Labor Relations Board issued a complaint on April 25, 1994, against Executive Floor Covering, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 14, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 18, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 2, 1994, notified the Respondent that unless an answer were received by June 13, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Maryland corporation with an office and place of business in Upper Marlboro, Maryland, has been a contractor specializing in the installation of floor coverings. During the 12-month period ending January 31, 1993, the Respondent, in conducting its business operations, purchased and received at construction sites and facilities located within the State of Maryland goods valued in excess of $50,000 directly from points outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Carpenter's District Council of Washington, D.C. and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union), of which the Fund has, at all material times, been an agent, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent performing work as described in the collective-bargaining agreement between the Respondent and the Union, effective for the period August 1, 1989 to July 31, 1993.

On or about August 22, 1989, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period August 1, 1989, to July 31, 1993, whereby it recognized the Union as the exclusive collective-bargaining representative of the unit and agreed to continue the agreement in effect from year to year thereafter unless timely notice was given in accordance with the terms of article XIII, section 1 of the collective-bargaining agreement. Since on or about August 1, 1989, pursuant to this agreement and by virtue of the automatic renewal provision, the Union has been recognized as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period August 1, 1989, to the present. For the period from August 1, 1989, to the present, based on Section 9(a) of the Act,[1] the Union has been the limited exclusive collective-bargaining representative of the unit.[2]

Since on or about January 29, 1993, the Union, acting through the Fund, has requested, by letter, that the Respondent furnish it with information by allowing the Fund's auditors to examine complete payrolls, individ-

[1] We note that the complaint inadvertently refers to Sec. 9(b) of the Act.

[2] In the absence of any need to determine in this proceeding whether the parties' relationship is governed by Sec. 9 or by Sec. 8(f), Member Browning would not reach that issue.

ual employee earnings records, payroll tax returns, and/or any other records relevant to verification of employees' hours for the period from January 1, 1990, through December 31, 1992. The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since on or about January 29, 1993, the Respondent has failed and refused to furnish the Union with the information it requested.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Executive Floor Covering, Inc., Upper Marlboro, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith by refusing to provide the Carpenter's District Council of Washington, D.C. and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, with requested information which is necessary for and relevant to the Union's performance of its duties as the limited exclusive collective-bargaining agent of the unit. The unit consists of the following employees:

> All employees of the Respondent performing work as described in the collective-bargaining agreement between the Respondent and the Union, effective for the period August 1, 1989 to July 31, 1993.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information it has requested since about January 29, 1993, by allowing the Washington Area Carpet and Industrial Insurance Fund auditors to examine complete payrolls, individual employee earnings records, payroll tax returns, and/or any other records relevant to verification of employees' hours for the period from January 1, 1990, through December 31, 1992.

(b) Post at its facility in Upper Marlboro, Maryland, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 22, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively and in good faith by refusing to provide the Car-

penter's District Council of Washington, D.C. and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, with requested information which is necessary for and relevant to the Union's performance of its duties as the limited exclusive collective-bargaining agent of the unit. The unit consists of the following employees:

> All of our employees performing work as described in the collective-bargaining agreement between us and the Union, effective for the period August 1, 1989 to July 31, 1993.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it has requested since about January 29, 1993, by allowing the Washington Area Carpet and Industrial Insurance Fund auditors to examine complete payrolls, individual employee earnings records, payroll tax returns, and/or any other records relevant to verification of employees' hours for the period from January 1, 1990, through December 31, 1992.

EXECUTIVE FLOOR COVERING, INC.